

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ORLANDO CARTER, Debtor,	:	
Appellant,	:	
v.	:	Case No. 3:18-cv-283
PNC FINANCIAL SERVICES	:	JUDGE WALTER H. RICE
GROUP, INC.,	:	
Appellee.	:	
		Chapter 7 Bankruptcy Appeal
		Case No. 06-30086
		Judge Guy R. Humphrey

DECISION AND ENTRY SUSTAINING APPELLANT'S MOTION FOR
REINSTATEMENT OF APPEAL (DOC. #6); VACATING JUDGMENT
(DOC. #5); REOPENING CASE; SETTING BRIEFING SCHEDULE

On August 13, 2018, *pro se* Appellant Orlando Y. Carter filed a timely Notice of Appeal of the United States Bankruptcy Court's August 1, 2018, Order dismissing Adversary Proceeding No. 18-3034. Doc. #1. On October 18, 2018, the Bankruptcy Court filed its Clerk's Certification of Record on Appeal, Doc. #2, noting that no designated items had been filed. This Court ordered Appellant's brief to be filed by November 1, 2018. No brief was filed within the time allotted.

The Court directed Appellant to show cause in writing why this appeal should not be dismissed without prejudice for want of prosecution. Doc. #3. When no response was filed, the Court dismissed the appeal without prejudice for

want of prosecution. Doc. #4. On December 28, 2018, judgment was entered in favor of Appellee. Doc. #5.

On January 22, 2019, Appellant filed a Motion for Reinstatement of Appeal, Doc. #6. He declares, under penalty of perjury, that he did not receive copies of the Court's briefing schedule or the Show Cause Order at the prison where he is currently incarcerated. He asks that the Court reinstate the appeal and reset the briefing schedule.

The Court interprets Appellant's motion as a motion for relief from judgment under Fed. R. Civ. P. 60(b). *See* Fed. R. Bankr. P. 9024 (incorporating Fed. R. Civ. P. 60 into the Bankruptcy Rules). Given Appellant's sworn statement that he did not receive the documents mailed to him, the Court finds excusable neglect. Moreover, no party will be prejudiced by the short delay that resulted from that neglect.

Accordingly, the Court SUSTAINS Appellant's Motion for Reinstatement of Appeal, Doc. #6, and VACATES the Judgment that was entered on December 28, 2018, Doc. #5. The Clerk is DIRECTED to reopen the above-captioned appeal.

No later than March 5, 2019, Appellant shall file with the bankruptcy clerk and serve on the Appellee a designation of the items to be included in the record on appeal, and a statement of the issues to be presented. Appellant's brief shall be filed no later than April 4, 2019. Appellant's brief shall be filed no later than April 18, 2019, and Appellant's reply brief shall be filed no later than April 25, 2019.

Date: February 15, 2019

A handwritten signature in black ink, appearing to read 'Walter H. Rice', is positioned above a horizontal line.

WALTER H. RICE
UNITED STATES DISTRICT JUDGE